



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

December 16, 1996

Mr. Chris Jones  
Assistant General Counsel  
Texas Department of Commerce  
P.O. Box 12728  
Austin, Texas 78711-2728

OR96-2405

Dear Mr. Jones:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 102520.

The Texas Department of Commerce (the "department") received a request for "[t]he financial statements submitted to the Texas Department of Commerce by Othal Brand, Sr., an individual and Othal Brand Sr., DBA Griffin & Brand of McAllen Inc. as part of the company's application to get \$4 million in bond money through the McAllen Industrial Development Authority of McAllen, Texas." You have submitted the requested information to this office for review, specifically financial statements from fiscal years 1993, 1994, and 1995. Although you take no position as to whether this information is excepted from required public disclosure, you have not released the information to the requestor because Griffin & Brand of McAllen, Inc. ("G&B") objects to the release of the information.

Pursuant to section 552.305 of the Government Code, we notified G&B of the request for information and of its opportunity to claim that the information at issue is excepted from disclosure. G&B responded by claiming that the requested information excepted from disclosure under section 552.110 of the Government Code as commercial or financial information.

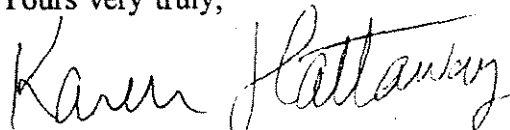
Section 552.110 protects the property interests of private persons by excepting from disclosure two types of information: (1) trade secrets and (2) commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision. In Open Records Decision No. 639 (1996), this office announced that it would follow the federal courts' interpretation of exemption 4 to the federal Freedom of Information Act when applying the second prong of section 552.110. In *National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974), the court concluded that for information to be excepted under exemption 4 to the Freedom of Information Act, disclosure of the requested information must be likely either to

(1) impair the Government's ability to obtain necessary information in the future, or (2) cause substantial harm to the competitive position of the person from whom the information was obtained. *Id.* at 770.

"To prove substantial competitive harm, the party seeking to prevent disclosure must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure." *Sharyland Water Supply Corp. v. Block*, 755 F.2d 397, 399 (5th Cir.), *cert. denied*, 471 U.S. 1137 (1985) (footnotes omitted). G&B has demonstrated that releasing the requested information would cause it to suffer substantial competitive harm. Therefore, the department must withhold the requested information from disclosure pursuant to section 552.110.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have any questions about this ruling, please contact our office.

Yours very truly,



Karen E. Hattaway  
Assistant Attorney General  
Open Records Division

KEH/ch

Ref: ID# 102520

Enclosures: Submitted documents

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